IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 8460 of 1999(F)

PETITIONER:

M/S.CHERUPUSHPAM FINANCIERS AND INVESTMENTS,
REP. BY ITS MANAGING PARTNER, K.J.JOSEPH, KAKKATTIL,
VALLICHIRA, PALAI.

BY ADV. SRI.S.A.NAGENDRAN(SR.)
SRI.PREMJIT NAGENDRAN
SRI.JOY THATTIL

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE TAHSILDAR, KANAYANNUR TALUK, ASSESSING AUTHORITY UNDER THE KERALA BUILDING TAX ACT.

3. THE REVENUE DIVISIONAL OFFICER, FORT COCHIN.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.8460/1999

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE JUDGMENT IN OP NO.4245/1989 DATED 24TH MAY, 1989 OF THIS COURT

EXT.P2 - TRUE COPY OF THE ORDER NO.K.DIS.4790/89/G DATED 13.2.1991 OF THE THIRD RESPONDENT

EXT.P3 - TRUE COPY OF ASSESSMENT ORDER NO.B3-7921/89 DATED 27.2.1999 ISSUED BY THE SECOND RESPONDENT

EXT.P4 - TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 26.3.1999 FILED BY THE PETITIONER TO THE REVENUE DIVISIONAL OFFICER, FORT COCHI.

//TRUE COPY//

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No. 8460 OF 1999

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Dated this the 9th August, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is a firm, which owns a multi storeyed building in Shanmugham Road, Ernakulam. According to the petitioner-firm, the construction of the building was completed during the years 1975-77.

2. It is stated in the petition, that the Corporation authorities, for the purpose of computing the property tax, had valued the building owned by the petitioner-firm at Rs. 12,60,008/- .

3. As envisaged under section 7 of the Kerala Building Tax Act (hereinafter referred to as 'Act'), the petitioner had filed his returns under the Act and the rules framed thereunder before the Tahsildar, Kanayannur Taluk. The Tahsildar had rejected the returns and had fixed the capital value of the building at Rs. 28,59,000/- and had levied the tax at Rs. Rs.2,59,650/-.

4. Aggrieved by the orders of assessment so passed by the Tahsildar under the provisions of the Act, the petitioner/assessee had preferred a statutory appeal . The first appellate authority had allowed the appeal. The matter was remanded to the Tahsildar by the first appellate authority to re-do the matter in accordance with law and also had issued certain directions while disposing of the appeal.

5. After the disposal of the appeal, the Tahsildar had passed yet another order of assessment, keeping in view the provisions of Section 5 (2) of

the Act and had levied the building tax at Rs. 3,01,500/- . Aggrieved by the said order passed by the Tahsildar, the petitioner-firm has filed an appeal before the Revenue Divisional Officer and the same is pending consideration. The petitioner-firm, questioning the vires of Section 5(2) of the Act is before us in this Original Petition.

6. Apart from other contentions, the learned counsel for the petitioner-firm would submit that the provisions of Section 5(2) of the Act has been struck down by this court in the case of **Shirly v. State of Kerala ([2006] (2) KLT 306)** and further would submit that the matter requires to be remanded to the Tahsildar for a fresh disposal, in accordance with law and in accordance with the provisions of the Act.

7. We are informed by the learned Senior Government Pleader Shri Muhammed Rafiq, learned counsel for the respondent that the State has accepted the verdict of this Court enunciated in **Shirly v. State of Kerala ([2006] (2) KLT 306).**

8. In view of the above, in our opinion, at this stage, we can only grant the first prayer sought for by the petitioner and in so far as other reliefs are concerned , a direction requires to be issued to the appellate authority, before whom, the appeal filed by the petitioner is pending for consideration. Accordingly, we pass the following order:

O R D E R

i) Original Petition is disposed of.

ii) Following the dictum of this Court in **Shirly v. State of Kerala ([2006] (2) KLT 306) ,** Section 5(2) of the Act, as has been amended by Act 13 of 1993, is held ultra vires, unconstitutional and discriminatory etc.

iii) Now a direction is issued to the first appellate authority to dispose of the appeal filed by the petitioner against the orders of assessment passed by the Tahsildar under the provisions of the Act, keeping in view the observations made by this court in **Shirly v. State of Kerala ([2006] (2) KLT 306),** as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this order.

iv) While disposing of the appeal, the petitioner shall be afforded an opportunity of being heard.

v) All other contentions raised by the petitioner-firm are left open.

vi) C.M.P. No. 14160 of 1999 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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O.P. No. 8460 OF 1999

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Dated this the 9th August, 2007

J U D G M E N T